

California Public Employees' Retirement System

Healthcare Investment Initiative Inter-Program Conflict of Interest Protocol (Effective April 18, 2007)

This Protocol shall be effective immediately upon adoption, and supercedes all previous policies and protocols on this subject. However, this Protocol does not supersede and is meant to supplement any applicable provisions of state or federal law, including the Political Reform Act (Cal. Gov. Code section 87200 et seq.) and Government Code sections 20152.5 and 20153.

I. OBJECTIVES AND PURPOSE

The Board of Administration of the California Public Employees' Retirement System (Board) is charged with the administration and management of the California Public Employees' Retirement System (CalPERS or System). The Board has a constitutional duty to administer the System in accordance with its fiduciary responsibility for investment of the moneys and administration of the pension system. The Board must discharge its duties with respect to the pension system solely in the interest of, and for the exclusive purposes of providing benefits to participants and their beneficiaries, minimizing employer contributions thereto, and defraying reasonable administrative expenses. The California Constitution specifies that the Board's duty to participants and their beneficiaries shall take precedence over any other duty.

The Board is also charged with managing a healthcare program under the Public Employees' Medical and Hospital Care Act (PEMHCA). As part of its duties, the Board enters into group medical plan contracts on behalf of the healthcare plan participants. In negotiating and administering these agreements, the Board owes a duty of loyalty to the participants of PEMHCA health plans. In addition to the PEMHCA plans, the Board is responsible for administering the self-funded Long-Term Care Plan (LTCP) that is created by statute as a trust fund for the exclusive benefit of its participants. While a fiduciary generally may not undertake conflicting roles, the Board has a legal duty to administer all of CalPERS benefit programs, including its pension, health, and long-term care plans. The purpose of this protocol is to ensure that the Board and its staff fulfill their fiduciary obligations to members of the plans that they administer.

The CalPERS Investment Office, through the Alternative Investment Management Program (AIM), is launching the Healthcare Investment Initiative (HII), which will target investments in healthcare services and products. The objective of the HII is to generate investment returns by leveraging the expertise of two CalPERS divisions – the Investment Office and the Health Benefits Branch (HBB).

The HII, however, may present potential conflicts between the interests of pension plan and health plan participants. Because AIM (through the HII) and HBB may engage, or contemplate engaging, in transactions or other decisions that simultaneously involve both programs, the System may be faced with conflicting duties or the appearance of such.

This Protocol is designed to: (1) assure the appropriate identification of actual, potential, or perceived inter-program conflicts of interest; (2) establish a process for evaluating these conflicts to ensure that each decision is made in the best interest of the respective plan's participants; and (3) identify the decision makers.

II. DEFINITIONS

The following definitions apply to terms used in this Protocol:

- A. The "Conflicts Officer" is CalPERS' General Counsel or his or her delegate.
- B. A "Disclosable Interest" is any circumstance that may give rise to an Actual, Potential or Perceived Conflict, and it is not limited to the Disclosable Interests reported under Section III.
- C. An "Inter-Program Conflict of Interest" or "Conflict" exists when an Official's discretionary decision-making or advice as to one Program may be biased or influenced by, or may have the appearance of being biased or influenced by, the interests of a different Program. An Inter-Program Conflict may be Actual, Potential, or Perceived as defined below:
 - i. An "Actual Conflict" exists when an Official has the right or ability to make, or influence the making of, an HII and/or HBB transaction or other decision, and the interests of the HII Program and the HBB Program diverge on the transaction or other decision.
 - ii. A "Potential Conflict" exists when the HII Program invests in a fund of funds, a fund, a company, or an entity that directly, or through a portfolio company, contracts with or otherwise provides goods or services to PEMHCA or the LTCP.
 - iii. A "Perceived Conflict" exists when no Actual or a Potential Conflict exists but the transaction or other decision may reasonably be viewed as giving rise to a Potential or Actual Conflict.

There is no “Inter-Program Conflict of Interest” or “Conflict” when an Actual or Potential Conflict does not exist and an HII Program investment, transaction, or other decision is not actually or potentially influenced by the HBB Program or the interests of PEMHCA or the LTCP.

- D. The “Inter-Program Conflicts Panel” or “Panel” means the panel selected by the Conflicts Officer to resolve Inter-Program Conflicts of Interest. The Panel includes the Conflicts Officer and additional members selected by the Conflicts Officer including, without limitation, Assistant Executive Officers from the operations support branch or divisions and/or the Deputy Executive Officer of Operations. The composition of the Panel may change depending on the conflict it is asked to resolve.
- E. An “Official” refers to a CalPERS Board member or employee who participates in discretionary administration or operation of a Program.
- F. A “Program” refers to a benefit program that CalPERS administers. The “Pension Program” includes the pension plans for members of the Public Employees’ Retirement System, the Legislators’ Retirement System, the Judges’ Retirement Systems I/II, the Volunteer Firefighters Length of Service Award Program, and the Supplemental Savings Programs. The “HBB Program” includes the group medical plan contracts for the benefit of PEMHCA healthcare plan members and LTCP participants.

III. DISCLOSURE OBLIGATIONS

This protocol establishes the following disclosure obligations:

- A. AIM and HBB will be responsible for working together to monitor and identify Inter-Program Conflicts.
- B. Each Official is responsible for identifying and reporting Actual, Potential, and Perceived Inter-Program Conflicts of Interest to the Conflicts Officer.
- C. Each Official shall take steps to ensure such reporting, including without limitation, attending training by the Conflicts Officer contemplated by Section V.A.
- D. AIM will be responsible for assisting HBB to identify HII investments.

- E. Once a Disclosable Interest has been reported to the Conflicts Officer, the Conflicts Officer may direct the Official to suspend further actions.

IV. PROTOCOL FOLLOWING DISCLOSURES

- A. As soon as an Official reasonably believes that an Inter-Program Conflict exists, the Official should notify the Conflicts Officer, who will advise the Official as to whether an Inter-Program Conflict exists. If an Inter-Program Conflict exists, the Conflicts Officer may use any reasonable means that he or she determines to be appropriate to avoid or remediate the Inter-Program Conflict, but generally shall utilize the following process:
 - i. The Official, if requested by the Conflicts Officer, shall prepare a written memorandum describing the Inter-Program Conflict and the pros and cons of the Official's recommendation or advice with respect to a decision or transaction, and submit the memorandum to the Conflicts Officer;
 - ii. The Conflicts Officer will submit the memorandum to the Inter-Program Conflicts Panel for consideration. In reviewing such a Conflict, the Panel may conduct its own independent investigation of the Inter-Program Conflict (including seeking impartial, disinterested advice from outside counsel, consultants, or advisors) before the Panel reasonably concludes that the decision or transaction is unbiased and in the best interest of the respective plan participants.
 - iii. The Inter-Program Conflicts Panel, if necessary, may decide not to approve a decision or transaction recommended by the Official because of a Conflict.
 - iv. The Inter-Program Conflicts Panel, if necessary, may delegate a transaction or other decision to a neutral, independent third party to avoid or remediate an Actual Conflict of Interest.
 - v. An Official may appeal a decision rendered under Sections IV.C.iii and IV.C.iv above by making a written request to the Inter-Program Conflicts Panel within two (2) business days of the decision.
- B. The Inter-Program Conflicts Panel may request quarterly updates or reports on activities conducted by AIM and HBB with respect to any Disclosable Interest.

- C. The Inter-Program Conflicts Panel has the right to meet and receive a presentation by AIM or HBB regarding any matter related to the HII that can reasonably be expected to be related to or cause a Disclosable Interest.
- D. The Inter-Program Conflicts Panel may require an Official to sign a certification stating that he or she has *not* acted on any Disclosable Interest in a manner that is inconsistent with this Protocol.

V. PROACTIVE RESPONSIBILITIES OF OFFICIALS

- A. The Conflicts Officer will provide periodic notice or training, as appropriate, to inform Officials of this Protocol and their duty normally to act solely in the best interest of each Program without regard to the other Programs.
- B. Whenever appropriate, and at a minimum of once annually, CalPERS will review the investments that were made through the HII and evaluate how the Protocol is working.
- C. This Protocol will be incorporated by reference into any written agreements signed between AIM's selected Strategic Partner and CalPERS, as well as the written operational procedures for HII, AIM and HBB.
- D. The Inter-Program Conflicts Panel will allocate among the affected Programs, as it deems appropriate, any cost it incurred in the Conflicts resolution process.
- E. CalPERS will not take any adverse action against any Official for bringing Inter-Program Conflict matters to the attention of the Conflicts Officer or the Inter-Program Conflicts Panel.
- F. Any uncertainty regarding requirements under this Protocol should be referred to Conflicts Officer for clarification.